



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board

Ben Ysursa, Secretary of State

Lawrence G. Wasden, Attorney General

Keith L. Johnson, State Controller

Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

Final Minutes Regular Land Board Meeting November 15, 2005

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, November 15, 2005 in Boise, Idaho. The meeting began at 9:05 a.m. in the second floor courtroom of the Borah Post Office building. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Ben Ysursa

Honorable Attorney General Lawrence G. Wasden (via conference phone)

Honorable State Controller Keith L. Johnson

Secretary to the Board Winston A Wiggins

Superintendent Howard was absent for this meeting.

ITEM NOT ON THE AGENDA

The meeting began with Director Wiggins introducing new IDL employees to the Board.

1. Chad Ramsay, [Pend Oreille Supervisory Area](#), Sandpoint
2. Alicia Ewing, [Priest Lake Supervisory Area](#), Coolin
3. Josh Harvey, [St. Joe Supervisory Area](#), St. Maries
4. Jim Newton, [Fire Management Bureau](#), Coeur d'Alene Staff Office
5. Ken Ockfen, [Forestry Assistance Bureau](#), Coeur d'Alene Staff Office
6. John Spencer, [Shop, Coeur d'Alene Staff Office](#)
7. Shane O'Shea, [Mica Supervisory Area](#), Coeur d'Alene
8. Jason Svancara, [Ponderosa Supervisory Area](#), Deary
9. Francine Gonzales, [Fiscal Section, Director's Office, Boise](#)
10. Carol Spoor, [Fiscal Section, Director's Office, Boise](#)

Governor Kempthorne welcomed the new employees and thanked them for their public service.

- **CONSENT**

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Secretary of State Ysursa to approve of the Consent Agenda Items 1 through 8, excluding Item 3. Item 3 was held for later discussion. Controller Johnson seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard being absent for this vote.

- **CONSENT**

1. **Director's Report – approved**

- A. Interest Rate on Department Transactions – October 2005
- B. Bureau of Real Estate, Land Sale Section, Official Transactions – September 2005
- C. Bureau of Real Estate, Easement Section, Official Transactions – September 2005
- D. Bureau of Surface and Mineral Resources, Official Transactions – September 2005
- E. Timber Sale Official Transactions – September 24, 2005 through October 21, 2005
- F. Timber Sale Activity Report
- G. Legal Matter Summary

2. **Timber Sales – Staffed by Bob Helmer, Chief, Bureau of Forest Management – approved**

A. River Camp	CR-10-0354	3,850	MBF	Bonner
B. Mica Pole	CR-41-0008	1,795	MBF	Latah
		319,850	LF	
C. Old 95	CR-43-4006	1,200	MBF	Idaho

3. **Approval Request for Disclaimer of Interest to the City of Bonners Ferry for Accretion Land Adjacent to the Kootenai River in Boundary County – Staffed by Perry Whittaker, Chief Bureau of Real Estate – see Motion**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for this parcel of land totaling 1.035 acres of the former bed of the Kootenai River and to require the City of Bonners Ferry to pay a fee of \$600.00 to the Department of Lands for this transaction.

DISCUSSION: Director Wiggins notified the Board that a fax from a private citizen in Bonners Ferry was received this morning. The fax offered a counterclaim to a part of this property. Director Wiggins asked the Board if they wanted to proceed with this item today. A representative from the Department of Transportation, Ms. Amy Schroeder, was present in the audience. Mr. Perry Whittaker, Chief, Bureau of Real Estate for the Department of Lands, was also in attendance.

Mr. Whittaker provided background information. He stated the fax appears to be a response from an adjacent landowner, Mr. Robert Moir. The State is disclaiming to the east and south of Mr. Moir's property. In March 2005 the Department asked Mr. Moir to provide information reflecting title to the property adjoining the meander line. Although Mr. Moir provided a stack of deeds back to the 1890s giving some chain of title, none of the deeds indicate exactly what Mr. Moir owns. Based on the data before the Board today, nothing indicates that claim and title to the City would adversely impact Mr. Moir.

Controller Johnson noted if the Board moves forward with the Department's recommendation, it appears the appropriate next step would be for this particular landowner to then proceed in court to seek conjunctive relief of some kind to stop the disclaimer from moving forward, as opposed to the

Board waiting to research more information to try to get the deed that describes specifically what Mr. Moir owns. That action could potentially delay the project. He asked if that is the kind of scenario before the Board. Mr. Whittaker stated that is correct. Governor Kempthorne added that if they must go the judicial route, the action could be tied up for months. Mr. Whittaker concurred.

Secretary of State Ysursa asked if there has been other correspondence with Mr. Moir and has he been aware of the process and timing. Mr. Whittaker stated a letter was sent to Mr. Moir on March 24, 2005 indicating if he was going to qualify for a disclaimer on any portion of the property, he needed to provide deeds and proof of ownership that he bordered it. Mr. Moir did not respond until now. The Department also sent a letter as a matter of courtesy last week to Mr. Moir indicating that this item was scheduled to go before the Board today for approval of a disclaimer to the City. A map was included with the Department's letter showing what was being disclaimed. Mr. Moir's response came in this morning by fax at 4:07 a.m. Governor Kempthorne asked if the Department's letter was sent certified mail. Mr. Whittaker stated he does not believe it was sent certified, but he is certain Mr. Moir received the letter because Mr. Moir's Exhibit 3 was copied from the attachment sent with the Department's letter.

Governor Kempthorne asked if it is possible to have a conditional approval. He asked if the Board can give an indication that it intends to approve this item absent some justified claim so that the final project can still proceed. Ms. Amy Schroeder, Department of Transportation representative, stated she believed it could be worked out so that the final design process could continue with the exception of having the right-of-way secured.

Controller Johnson noted Ms. Schroeder spoke in terms of a final design process, indicating actual construction has not taken place. Ms. Schroeder stated that is correct. Controller Johnson remarked if no dirt is being moved it seems the final decision could be delayed until the December Board meeting. In addition, Controller Johnson noted the U.S. Supreme Court case from this summer dealing with private property rights and government exercising eminent domain rules. He feels this item, although it is not eminent domain, has a very similar fact pattern wherein the Board would be making a decision that has the potential of affecting a private property owner in a negative way. Controller Johnson stated he knows how the people of Idaho feel about private property rights and he believes it would be wise for the Board to be cautious in moving forward with the discretion it exercises today.

Director Wiggins stated a legal review will be completed on this item along with an examination of the information provided by Mr. Moir. A date certain can be provided to allow Mr. Moir time to provide the necessary documents to confirm his claim, or to allow the Department to confirm the claim.

Governor Kempthorne asked Director Wiggins if he was prepared to suggest the language of a motion. Director Wiggins suggested that the Board consider a conditional approval as an indication to the Department of Transportation and the City of Bonners Ferry of the Board's intention to move ahead pending information received from Mr. Moir. That the Department will immediately notify Mr. Moir that he has until a date certain, which would be prior to the briefing meeting for the December meeting, to provide the information and, if the information is not received, then the Board action would be finalized or confirmed in December.

BOARD ACTION: A motion was made by Secretary of State Ysursa that the Board grant conditional approval as an indication to the Department of Transportation and the City of Bonners Ferry that the intention of the Board is to move ahead. The Department will immediately notify Mr. Robert Moir that he has until a date certain, which would be prior to the briefing meeting for the December meeting, to provide information to support his claim. If the Department does not receive the information then the Board action would be confirmed in December. Controller Johnson seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard being absent for this vote.

4. **Approval Request for Disclaimer of Interest to Donna Gabica for Accretion Land Adjacent to the Boise River in Canyon County** – Staffed by Perry Whittaker, Chief Bureau of Real Estate – **approved**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for three parcels totaling 11.70 acres of the former bed of the Boise River and to require Donna Gabica to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

5. **Approval Request of Easement to Idaho Power Company** – Staffed by Perry Whittaker, Chief Bureau of Real Estate – **approved**

DEPARTMENT RECOMMENDATION: Direct the Department to complete the final road easement with Idaho Power Company.

BOARD ACTION: Approved.

6. **Approval Request for Disclaimer of Interest to RiverWood LLC for Accretion Land Adjacent to the Boise River in Ada County** – Staffed by Perry Whittaker, Chief Bureau of Real Estate – **approved**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one (1) parcel totaling 0.58 acre of the former bed of the Boise River and to require RiverWood L.L.C. to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

7. **Request for Approval to Dispose of Surplus Property Owned by the Idaho State Library to the Idaho Transportation Department in Ada County** – Staffed by Kit Clark, Deputy Attorney General, Contracts Division, Office of the Attorney General – **approved**

DEPARTMENT RECOMMENDATION: Direct the Department to coordinate the transfer of the storage building from ISL to ITD.

BOARD ACTION: Approved.

8. **Minutes – approved**

A. Regular Land Board Meeting – October 11, 2005

• **REGULAR**

9. **Endowment Fund Investment Board** – Presented by Larry Johnson, Manager of Investments, EFIB – **No action was taken on this agenda item.**

Members of the Endowment Fund Investment Board present:

- Dean Buffington, Chairman
- Parker Woodall, Member and Chairman of the EFIB Audit Committee
- Larry Johnson, Manager of Investments

- Bill Deal, Member
- Gavin Gee, Member
- Thomas Kealey, Member
- Vaughn Heinrich, Member

Chairman Buffington introduced Larry Johnson, the new EFIB Manager of Investments. An executive search was conducted and a number of candidates were interviewed. Mr. Johnson was chosen to become the new Manager of Investments for the Endowment Fund Investment Board and has been with the Board for six or seven weeks.

A. Endowment Fund Investment Board Monthly Manager's Report

Larry Johnson. Updated information was distributed. The month of October was weak for the Fund, but investment managers are performing as expected and the Fund is ahead of its benchmark. The return fiscal year-to-date is 3%. The preliminary results for the first eleven days of November have so far made up the ground that was lost in October. As of yesterday, the Fund was up 4.7%.

Governor Kempthorne asked if the EFIB is satisfied with the Fund managers. Mr. Johnson stated at this point yes. Managers are evaluated every month or so. Two managers are on the watch list: Marvin & Palmer and Oppenheimer. These two managers have historically not performed well. However, they are doing well this year.

B. Endowment Fund Reform Review Task Force – Progress Update

Larry Johnson. The Task Force has met three times. Good progress is being made on the objectives listed. The Task Force has added to the longer term objectives to consider any other legislative changes that might improve the efficiency of the land management process. There are difficult questions to be addressed. The group is working together very well.

C. Fiscal Year 2005 Audit Summary – *Parker Woodall, Chairman, EFIB Audit Committee*

Audit Committee Members: Parker Woodall, Chairman; Bill Mitchell; Senator Brad Little

Parker Woodall. The Audit Committee meets regularly with Andy Potter of the EFIB staff and with the audit consultants. Mr. Woodall stated the EFIB received an unqualified audit for fiscal year 2005. All of the assets that should be in the Fund are accounted for. One change made this year is the inclusion of the Capitol Permanent Fund assets into the Endowment Fund for efficiency of investment. This change also eliminates the need to pay for a separate audit.

The independent auditor's report on compliance and internal controls was good. No reportable conditions were found. No instances of non-compliance with either laws or regulations, or weaknesses in internal controls, were found. In addition, at the twelfth month of the monthly reports to the Land Board, no adjustments had to be made to any of the prior eleven reports. Everything footed and the accuracy of those reports was appreciated. Mr. Woodall believes the primary reason for the good audit is the continued increased cooperation between the EFIB, the Department of Lands and the State Controller's office.

In addition, Mr. Woodall noted that two employees left the EFIB staff. Mr. Larry Johnson replaced one of those employees, and the other employee has not been replaced yet. Due to the departure of these employees, the EFIB engaged an independent audit of expenditures for a twenty-one month period leading up to these two people leaving just to make sure there were no problems. That audit did not reveal anything done outside of state guidelines.

In closing Mr. Woodall stated the EFIB appreciates the increased cooperative effort it has had with the Land Board, and particularly with the Controller's office and the Department of Lands.

DISCUSSION: Governor Kempthorne asked if there is anything that the members of the Land Board should put on the radar screen for six months or twelve months from now. Mr. Woodall stated not to his knowledge. He believes the Endowment Fund Reform Committee is conducting an overview look and, in a sense, the EFIB is looking to that review for results, too. He remarked it is nice to have an outside look at what you are doing. From the audit perspective, no surprises were found.

Governor Kempthorne complimented the EFIB on its procedures and on the steps it has taken to ensure that particular items are covered. He also appreciated the fact that there are occasions when the Audit Committee meets without staff present. He highlighted the tremendous talent that is represented by the Endowment Fund Investment Board and noted that the State is very well served by its members.

Secretary of State Ysursa asked if everything has been solved on the pooled accounts and balances and a couple of negative balances from previous times. He asked if the future is looking good so the same situation does not occur again. Mr. Johnson stated the problem was remedied. The EFIB did a quick rough reforecast of fiscal 2007 and concluded that there are comfortable margins in all accounts to make the distributions promised to the Legislature last September.

D. Joint Meeting

Combined with the dialog above.

No action was taken on agenda item 9.

10. Recommendations of the Forest Practices Act Advisory Committee (FPAAC) for Amendments to Forest Practice Act Administrative Rules – Presented by Ron Litz, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: Adopt the proposed as final rules.

DISCUSSION: Governor Kempthorne stated he appreciates the fact that this appears to have been a thorough process with good input and consensus from a variety of interests.

BOARD ACTION: A motion was made by Secretary of State Ysursa to move the Department's recommendation. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard being absent for this vote.

11. Final Approval Proposed Rule Amending IDAPA 20.03.02, Rules Governing Exploration and Surface Mining in Idaho – Presented by Denise Mills, Assistant Director, Lands, Minerals, Range

DEPARTMENT RECOMMENDATION: Adopt the pending rule and direct the Department to submit the pending rule to the Office of Administrative Rules no later than November 16, 2005.

DISCUSSION: Governor Kempthorne commented that when you consider the process on this item, good input was received. Many of the different interested parties provided comments. There was one meeting, however, that should have happened and did not. The Board required that the meeting take

place and that meeting took care of some of the final concerns so that the end product is very good for the State and very good for the system.

Governor Kempthorne commented to the new IDL employees that he is an advocate of being results oriented with an attitude of asking how can we help. How can we get to a positive solution. Along with that goes being a good listener to people who have concerns. He stated that does not mean we always agree. The Board has had tough hearings where sometimes rulings were not as a citizen or group wanted, but on most occasions, they would still come away saying that at least they were heard.

Attorney General Wasden asked if Hecla's comments were considered and is Hecla satisfied with the changes made in the final proposed rule. Assistant Director Mills stated Hecla's comments were considered. However, a couple of comments could not be addressed to Hecla's satisfaction. There were questions about the rulemaking authorities of the Idaho Department of Lands and the Board. In addition, there was a suggestion that the authority for rulemaking under the Surface Mining Act would be constrained only to the terms of the Act. This comment did not take into consideration Executive Order 88-23, which is the Antidegradation Policy for the State that allows other agencies besides DEQ to promulgate rules for water quality protections. The rules provided are simply for Best Management Practices to protect water quality. A letter was sent to Hecla about ten days ago immediately following receipt of their comments, and the Department has not heard back from them. A copy of the Department's letter was sent to Jack Lyman of the Idaho Mining Association. Hecla's letter was copied to Mr. Lyman as well. The Department has not heard from Mr. Lyman either.

Governor Kempthorne asked when the copy was sent to Mr. Lyman. Director Wiggins stated about ten days ago. Some changes were made in accordance with Hecla's request. Assistant Director Mills highlighted one concern, but in general Director Wiggins believes the Department has complied with the suggested changes and wording. The question about rulemaking authority is not really a question about the rule language itself but more of a philosophical question.

BOARD ACTION: A motion was made by Attorney General Wasden to move adoption of the Department's recommendation. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard being absent for this vote.

Governor Kempthorne stated this rulemaking was a good example of where a little more effort on the outreach would have been beneficial. As a Board member, he felt jammed by the deadline and the prospect of being out of compliance. However, the effort was done ultimately and this rulemaking has reached a good resolution.

At 9:58 a.m. a motion was made by Controller Johnson to resolve into Executive Session. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Dr. Howard being absent for this vote.

- **EXECUTIVE SESSION**

- A. To Consider Records that are Exempt from Disclosure [[Idaho Code § 67-2345\(1\)\(d\)](#)]
- B. To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation [[Idaho Code § 67-2345\(1\)\(f\)](#)]
- C. To Consider Personnel Matters [[Idaho Code § 67-2345\(1\)\(b\)](#)]
- D. To Consider Acquiring an Interest in Real Property Which is Not Owned by a Public Agency [[Idaho Code § 67-2345\(1\)\(c\)](#)]

At 10:20 a.m. the Board resolved into Regular Session. No actions were taken by the Board during the Executive Session.

There being no further business to come before the Board, upon unanimous consent of the members present the meeting adjourned at 10:20 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne

President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Ben Ysursa

Ben Ysursa
Secretary of State

/s/ Winston A Wiggins

Winston A Wiggins
Director

<p>The above-listed final minutes were approved by the State Board of Land Commissioners at the December 20, 2005 regular Land Board meeting.</p>
